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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 LINCOLN GENERAL INSURANCE
12 COMPANY,

13 Plaintiff,

14 v.

15 RYAN MERCALDO LLP, RYAN
16 MERCALDO & WORTHINGTON
17 LLP, and BRIAN P. WORTHINGTON,

Defendants.

Civil No. 13-cv-2192-W (DHB)

**ORDER REGARDING JOINT
MOTION RE: PROTECTIVE
ORDER**

[ECF No. 41]

18 On April 3, 2015, the parties filed a Joint Motion for Determination of Discovery
19 Dispute Regarding Protective Order. (ECF No. 41.) The parties dispute whether a
20 protective order should be entered in this action. Having reviewed the parties'
21 submissions and supporting exhibits, the Court **GRANTS in part** Plaintiff's request for
22 a protective order, as set forth below.

23 **I. BACKGROUND**

24 This is a legal malpractice action arising out of a coverage opinion rendered by
25 Defendants with respect to an underlying state court action involving one of Plaintiff's
26 insureds. In April 2009, Lillian and Chris Gradillas sued Kenneth Nwadike, America Bus
27 Line, and others in state court following a sexual assault that occurred on a bus operated
28 by Mr. Nwadike and American Bus Line. Mr. Nwadike and America Bus Line were

1 insured by Plaintiff, Lincoln General Insurance Company. Plaintiff agreed to defend the
2 underlying action with a reservation of rights letter. Thereafter, Plaintiff retained
3 Defendants to issue a coverage opinion. Based on Defendants' coverage opinion,
4 Plaintiff denied coverage in the underlying action and withdrew its defense. A stipulated
5 judgement was entered against Mr. Nwadike and America Bus Line, and they assigned
6 their rights to the Gradillases. (ECF No. 8.)

7 In February 2012, the Gradillases, as assignees, instituted an insurance bad faith
8 action against Plaintiff. Summary judgment was entered in favor of the Gradillases, and
9 a final judgment of \$2.5 million dollars was entered against Plaintiff. The bad faith case
10 is currently on appeal in the Ninth Circuit. (*Id.*)

11 In the instant action, Plaintiff alleges claims against Defendants for legal
12 malpractice/professional negligence, breach of fiduciary duty, and vicarious liability.
13 (*Id.*) The parties have commenced discovery, but have reached an impasse regarding
14 whether a protective order is necessary in this case. It appears that Plaintiff is refusing
15 to complete its document production until the issue is resolved.

16 On April 3, 2015, following unsuccessful meet and confer efforts, the parties filed
17 the instant motion. (ECF No. 41.)

18 II. DISCUSSION

19 The Court in its discretion may enter a protective order upon a showing of good
20 cause. Fed. R. Civ. P. 26(c)(1) ("The court may, for good cause, issue an order to protect
21 a party or person from annoyance, embarrassment, oppression, or undue burden or
22 expense . . ."). The party seeking a protective order "bears the burden of showing
23 specific prejudice or harm will result if no protective order is granted." *Phillips ex rel.*
24 *Estate of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002). If a
25 showing of particularized harm from disclosure is made, the Court then balances the
26 public and private interests to decide whether a protective order is necessary. *Id.*

27 Here, the parties have identified three categories of documents that are at issue: (1)
28 documents relating to the underlying sexual assault claim; (2) documents relating to

1 Plaintiff's dealings with its insured, Mr. Nwadike, including Plaintiff's entire claim file;
2 and (3) documents relating to the issues bearing on the pending bad faith action that may
3 not be discoverable in that action. Plaintiff argues that a protective order is necessary to
4 protect the privacy of the sexual assault victim, and to prevent harm to Plaintiff in the
5 pending bad faith action. Defendant counters that Plaintiff has not met its burden to show
6 a particularized need for a protective order. Defendant argues the sexual assault victim
7 never requested a protective order be entered in the underlying action, that the claim file
8 would be subject to discovery in the bad faith case, and that any concerns regarding
9 privilege can be addressed through redaction.¹

10 First, with regard to documents relating to the underlying sexual assault claim, the
11 Court finds a protective order is warranted. The victim, Ms. Gradillas has an expectation
12 of privacy in these matters. Although it appears that a protective order was not issued in
13 the underlying action, there is no information regarding the scope of the documents that
14 were produced in that case. It is possible that Plaintiff may have documents relating to
15 the sexual assault that were not produced by Ms. Gradillas in the underlying case.
16 Therefore, to protect the privacy interests of the sexual assault victim, who is a third party
17 and not represented in this action, the Court finds good cause exists for the entry of a
18 protective order concerning documents relating to the underlying sexual assault claim.

19 Next, with regard to the second category of documents, the Court finds that
20 Plaintiff has not met its burden to show a protective order is necessary. Plaintiff seeks
21 to protect the entire claim file on the premise that disclosure may negatively impact
22 Plaintiff in the pending bad faith action, in the event that case is remanded. However, the
23 claim file is subject to discovery in the bad faith case. Moreover, the Court notes that Mr.
24 Nwadike waived his expectation of privacy or confidentiality relating to his dealings with
25 Plaintiff when he assigned the bad faith claim to the Gradillases. Accordingly, the Court
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27 ¹ The Court notes that Plaintiff has produced extensively redacted copies of billing records.
28 Although Plaintiff has apparently agreed to revise its redactions to the billing records, the Court reminds
Plaintiff that billing statements should only be redacted if the content contains work product or
privileged information.

1 declines Plaintiff's request to enter a blanket protective order concerning documents,
2 including Plaintiff's entire claim file, that relate to Plaintiff's dealings with its insured,
3 Mr. Nwadike.

4 Finally, the Court finds good cause exists for the entry of a protective order
5 concerning documents that would not otherwise be discoverable in the pending bad faith
6 action, such as attorney-client privileged communications. The Court agrees with
7 Plaintiff that the potential for the improper sharing of privileged and confidential
8 information with the litigants in the bad faith action warrants protection.

9 Considering the public and private interests, the Court finds that on balance, a
10 limited protective order is appropriate in this case to protect the first and third categories
11 of documents identified by the parties. The Court finds that a protective order is not
12 necessary for the second category of documents. Accordingly, Plaintiff is directed to
13 produce to Defendants all responsive documents in the second category forthwith. The
14 parties are further instructed to meet and confer, and submit for the Court's consideration,
15 a mutually agreeable protective order regarding the first and third categories of
16 documents.

17 III. CONCLUSION

18 For the foregoing reasons, the Court HEREBY ORDERS that Plaintiff's request
19 for a protective order is **GRANTED in part**. The parties shall submit to the Court a
20 proposed protective order that complies with the Court's ruling no later than **May 1,**
21 **2015.**

22 **IT IS SO ORDERED.**

23 DATED: April 15, 2015

24 
25 DAVID H. BARTICK
26 United States Magistrate Judge
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